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ACQUITTAL IN A CRIMINAL PROSECUTION AS A DEFENSE TO A CIVIL ACTION FOUNDED ON THE SAME FACTS UNDER THE PHILIPPINE PRACTICE.—The case of *Almeida v. Abaroa*, decided March 27, 1907, by the Supreme Court of the Philippine Islands presents an interesting phase of the general question discussed in an article in the MICH. LAW REV., Vol. VI, p. 136, entitled "The Position of the Law of Torts in the Spanish System." It also illustrates the perplexing problems which arise from the clash of the American and Spanish systems of jurisprudence in our insular possessions. In a prosecution for arson the defendant had been acquitted on the ground that the evidence did not show his guilt beyond a reasonable doubt. In acquitting him, however, the trial court stated that the proof presented by the prosecution indicated the guilt of the accused and expressly reserved to the injured party all the rights which he had to institute a civil action for damages against the defendant. The prosecution appealed to the Supreme Court of the Philippine Islands in accordance with the practice then in vogue and the finding of the trial court was there sustained. Subsequently in *Kepner v. United States*, 195 U. S. 100, the United States Supreme Court decided that the assumption of appellate jurisdiction by the Supreme Court of the Philippine Islands under such circumstances was in violation of the double jeopardy clause in the federal constitution.

Under the Spanish system the civil action and the criminal action arising out of an alleged crime are ordinarily brought together, and in case the defendant is found guilty the court imposes on him, as a part of the sentence, the obligation to pay the damages occasioned by his crime. The injured party may, however, reserve his right to bring a separate civil action, if this can be done consistently with the finding in the criminal action. If this right is not so reserved it is considered that the two actions are combined. (Arts. 108 and 112 *Enjuiciamiento Criminal* Peninsular.) In the case under consideration the injured party had not reserved the right to bring a separate civil action.

After the finding of the trial court in the criminal action was sustained on appeal the injured party instituted a civil action against the same defendant, alleging in his complaint the very same facts which had been the foundation of the prosecution. The answer of the defendant was a general denial and that the allegations of the complaint were *res judicata*, relying on the findings in the former criminal action predicated on the same facts. The trial court upheld the defense of *res judicata* and on appeal this holding was sustained by the Supreme Court of the Philippine Islands. It will be seen that the effect of this decision and of the *Kepner* case is to deprive a person injured by the commission of a crime of his right to appeal from the findings of the trial court in the criminal action, and also of his right to bring a separate civil action predicated on the same facts, except perhaps in the case in which that right has been expressly reserved.

Through the kindness of a member of the Supreme Court of the Philippine Islands and of counsel for the appellees the writer has before him the proof sheets of the decision and the briefs of both parties.

In an able and exhaustive brief in which the authorities, both Spanish and American, are reviewed, the appellant took the following positions:

1st. That under the Spanish Law the extinction of the penal action carries with it the civil action only in the case in which the non-existence of the facts from which the civil action might arise has been declared by final sentence. Inasmuch as there was no such finding in this case, but rather that the proof indicated the guilt of the accused, but not beyond a reasonable doubt, the civil action was not extinguished thereby.

2nd. That inasmuch as the accused in the criminal action was discharged for want of sufficient evidence, and was not found innocent, that finding, while a bar to further prosecution, is no bar to the civil action arising out of the same facts.

3d. That under the Spanish law the trial court in the criminal case has no jurisdiction over the civil action arising therefrom unless the accused is found guilty, and so a decision thereon would not be *res judicata*.

4th. That in order that a matter decided in one case be *res judicata* in another, there must be the most perfect identity between the causes of the actions and the persons of the litigants in the two cases. Inasmuch as under the Spanish law the government is the real party plaintiff in the criminal action, the injured person being a party only incidentally or conditionally upon a finding that the defendant is guilty, one of the essentials of *res judicata* in the present case, viz.—identity of persons—is lacking. This is especially so under the present practice, because according to Art. 107 of Gen'l Orders No. 58 the criminal action is completely controlled by the prosecuting attorney, the injured party being deprived even of his right of appeal under the decision in the *Kepner* case.

5th. That the defendant may have been civilly liable although guilty of no crime, according to Arts. 1093, 1902, and 1903 of the Civil Code.

6th. That Art. 795 of the New Code of Civil Procedure now in force in the Islands had the effect of completely divorcing the civil and criminal action arising out of a crime or misdemeanor, so that now they may and ought to be exercised entirely independently in all cases.

7th. That in a criminal case, the defendant must be proved guilty beyond a reasonable doubt, and in a civil case, his liability is established by a mere preponderance of evidence—that the changes in procedure established under the American regime have made this distinction of such importance that no finding of innocence in the criminal action, especially where, as in this case, it is based on want of sufficient evidence to prove the defendant's guilt beyond a reasonable doubt, should prejudice in any way the right of the injured party to recover his damages in a civil action.

8th. That upholding the defense of *res judicata* in this case would violate the 5th section of the Act of Congress of July 1st, 1902, which provides that no law shall be passed in these Islands which deprives any person of his property without due process of law, or which denies to any person the equal protection of the law, inasmuch as the effect of such a decision and of the *Kepner* case would be to deprive the persons injured by a crime of any redress in the courts.

In the brief of the appellees the following positions were taken:

1st. That the effect of the allegations of the complaint was to charge the defendant with the crime of arson.

2nd. That the innocence of the defendant as to that crime had already been established in the criminal action.

3rd. That the civil liability of the defendant for that crime is incident to and dependent upon his criminal liability and his discharge in the criminal action of necessity operated to exempt him from civil liability therefrom.

4th. That even if the right to bring a separate civil action had been reserved, it could not have been exercised unless there had been a conviction.

5th. That the only effect of the attempted reservation by the trial court in the criminal action was to give the offended party the right to bring an action for an act or omission when there was fault or negligence not punished by law.

6th. That the result of upholding the defense of *res judicata* in the case would affect all alike and so would not violate the provision of the Act of Congress referred to in the brief of the appellant. The justice or injustice of the situation is a matter for legislative, not judicial adjustment.

7th. That a sentence rendered in a civil action having for its basis an alleged crime would be null and void if in the criminal action the crime should not be proven or the defendant found not guilty.

8th. That the complaint in this case lacks an essential allegation, viz.—the conviction or criminal liability of the defendant.

9th. That the complaint in this case being based on Art. 1092 of the Civil Code, whereby the plaintiffs are governed by the provisions of the Penal Code, they cannot recover under Art. 1093 of the Civil Code whereby they would be governed by the provisions of the Civil Code.

The Supreme Court of the Philippine Islands sustained the contentions of the appellee and held that the acquittal in this case necessarily implied the innocence and freedom from responsibility of the accused; that according to Art. 742 of the Law of Criminal Procedure all questions relating to civil liability are decided in the criminal action; that if the right to bring a separate civil action is reserved it can be exercised only in case the defendant is found guilty in a criminal action; and that the reservation of the right to bring a civil action in a judgment of acquittal refers to a civil action founded on causes separate and distinct from that of the offense charged.

The cause is now pending before the United States Supreme Court and it will be interesting to see what disposition is made of it there. C. A. D.